

## R E M A R K S

In the Office Action, the Examiner rejected the pending claims under 35 USC §103. MPEP section 706.02(l) sets forth the conditions for patentability and non-obvious subject matter for rejections under 35 USC 103(a) using prior art under 35 U.S.C. 102(e). This section states that “[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

Applicant respectfully submits that the above-referenced application has been assigned to Nimble Technology, Inc. The Examiner has cited Patent No. 6,581,062 in the rejection of the claims under 35 USC 103(a). This cited patent was assigned to Nimble.com on February 28, 2000, as shown in the assignments submitted herewith. The entity Nimble.com appears to be a different entity from Nimble Technology, Inc. However, a certificate of incorporation signed on April 7, 2000 shows that the name “Nimble.com” was changed to “Nimble Technology, Inc.”. A copy of this certificate of incorporation is submitted herewith. Therefore, “Nimble.com” and “Nimble Technology” refer to the same entity. In other words, “Nimble.com” and “Nimble Technology, Inc.” were never two separate entities.

The present application was filed on August 1, 2001, and was assigned to Nimble Technology, Inc. Therefore, both the pending application and the cited patent were subject to assignment to a common assignee at the time the claimed invention was made. As such, the

reference, Draper, was owned by the same entity as the subject application at the time the claimed invention was made. As such, Applicant respectfully submits that the cited reference Draper shall not preclude patentability of the pending claims under 35 USC 103(a). Accordingly, Applicant respectfully submits that claims 9-32, 36, 38, 40, and 42-56 are allowable.

In addition, the Examiner has objected to claims 9 and 15 under 35 USC 101. In response to the Examiner's objection under 35 USC 101, claim 9 has previously been amended to clarify that the computer-readable medium stores computer-readable instructions, and therefore excludes waves or energy forms (which are not computer-readable instructions). The Examiner has indicated concerns that claim 9 will cover forms of energy such as waves and signals. Applicant respectfully requests that the Examiner suggest an amendment to claim 9 in order to exclude waves and signals if the claim language is still not acceptable.

With respect to claim 15, the Examiner has indicated that the specification does not disclose a computer system. Applicant has therefore removed this limitation from claim 15. Applicant respectfully asserts that claim 15 is directed to statutory subject matter, since it causes the storing of data in a data structure. More particularly, the claimed invention enables data retrieved from multiple data stores storing data in different formats to be stored in a single data structure. As a result, a query directed to multiple data stores storing data in different formats may be processed. If this amendment is unacceptable, Applicant respectfully requests that the Examiner propose an alternate amendment.

The Examiner also addressed claim 24, which the Examiner has also asserted is non-statutory subject matter. Applicant respectfully asserts that claim 24 is written in standard

means-plus-function format. As such, Applicant respectfully asserts that claim 24 claims statutory subject matter. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of the claims under 35 USC 101.

The specification was previously amended in response to the Examiner's objection to the specification. The Examiner asserts that this amendment to the specification raises new matter because the subject matter was not originally disclosed. Applicant respectfully traverses this assertion. In fact, the claims as originally filed did recite a computer system and computer-readable media. As such, Applicant has merely amended the specification to conform with the claims, as originally filed.

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 50-0388 (Order No. ACTUP006).

Respectfully submitted,  
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